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Plaintiff's failure to comply with summary judgment rules dooms claims

When litigants move for or oppose summary judgment, the Federal Rules of Civil Procedure and U.S. District Court Local Rules require such litigants to present their case thoroughly and include specific citations to the record to show that there are, or are not, genuine disputes of material fact.

In *Packer v. Trustees of Indiana University School of Medicine*, No. 15-1095 (7th Cir. Aug. 28, 2015), the plaintiff's failure to address required elements of her claims and include specific citations to the record led to the dismissal of her gender discrimination, Equal Pay Act and retaliation claims at summary judgment.

Dr. Subah Packer, the plaintiff, began working at Indiana University in 1986. In 1999, when she sought tenure on the university's medical school faculty, Craig Brater, the medical school dean, opposed her appointment and her application was denied.

However, Packer grieved the denial of her application and, in 2001, became tenured and was promoted to the position of associate professor.

Packer worked in the physiology department. Professors in that department were evaluated annually based on their performance in three areas: research, teaching and service. The research category was based on a professor's record of publishing research and success in obtaining external funding to support the research.

In the 2005-06, 2006-07 and 2007-08 academic years, Packer received an overall rating of "unsatisfactory" in her evaluations due to her alleged inadequate performance in the research category. In 2008-09, she received an overall rating of "excellence," despite poor performance in the research category. The rating was primarily based on winning a prestigious national teaching award. However, she received a rating of "unsatisfactory" in the 2009-10, 2010-11 and 2011-12 academic years.

In or around 2011, Packer filed a

lawsuit in federal district court bringing claims under Title VII of the Civil Rights Act of 1964 and the Equal Pay Act. Packer alleged that the university discriminated against her based on gender with respect to her compensation and working conditions and retaliated against her because she complained internally about the alleged discrimination.

On Dec. 6, 2013, the university terminated Packer's employment due to her poor performance. After her termination, Packer amended her complaint to include her discharge, which she alleged was additional proof of gender discrimination and retaliation, as well as a breach of contract.

The university moved for summary judgment on all of Packer's claims. The district court granted summary judgment for the university because Packer's response did not sufficiently analyze required elements of her claims and did not include specific citations to the record.

On appeal, the 7th U.S. Circuit Court of Appeals affirmed the district court's dismissal of Packer's claims.

The court cited Federal Rule of Civil Procedure 56, which requires non-movants at summary judgment to "cite to particular parts of materials in the record" in order to show that there is a genuine dispute of fact between the parties on a relevant point." (Emphasis added by the court.)

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Further, U.S. District Court Local Rules, such as those adopted by the U.S. District Court for the Southern District of Indiana (where Packer filed her lawsuit), require that citations to the record "must refer to a page or paragraph number or otherwise similarly specify where the rel-



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evant information can be found in the supporting evidence." (Emphasis added by the court.)

Packer's memorandum violated Rule 56 and the applicable local rule because it failed to analyze all required elements of Packer's claims and lacked specific citations to the portions of the record on which she relied to oppose summary judgment.

In support of her gender-discrimination claim, Packer alleged that she was paid less than male counterparts and discharged on the basis of her gender. She further alleged that Brater and Dr. Michael Sturek were the driving forces behind the alleged discrimination, and that they were biased against female faculty members.

However, in support of her claim that Brater treated female

positions," in violation of Rule 56 and the applicable local rule.

The court further stated that "[i]t is not the court's role or obligation to read an entire deposition or affidavit in an effort to locate the particular testimony a party might be relying on; the court ought to know what portion of a witness' testimony the party is invoking so that it can focus its attention on that testimony and assess whether it is admissible and actually supports the fact or inference for which it is cited."

Further, in her attempt to prove gender discrimination under the indirect method of proof, Packer cited no evidence satisfying the elements of her prima facie case, and no evidence that the university's gender-neutral reasons for firing her were a pretext for discrimination.

Packer's "totally inadequate invocation of the McDonnell-Douglas framework ... assigned to the district court the entire job of constructing an indirect case of discrimination, which the court rightly declined to perform."

Packer's memorandum was equally deficient with respect to her retaliation, Equal Pay Act and breach of contract claims. For example, she devoted "a few sentences" to explain the evidentiary basis for why her retaliation claim should survive summary judgment.

And, she "made no effort to weave such evidence into a cogent argument, grounded in the case law, as to why a fact finder might be able to conclude that Brater and the university had embarked on a course of retaliatory conduct because she engaged in protected conduct."

As to the Equal Pay Act and breach of contract claims, Packer offered no analysis and no citations to the evidence in support of the requisite prima facie case of discrimination in compensation, or to establish a contract. The court stated it was not a district court's job to root through the record in an effort to find evidence to support the claims.

—Matthew P. Kellam, an attorney at Laner, Muchin Ltd. contributed to this column.